



STATE OF ARIZONA
ARIZONA STATE LIQUOR BOARD
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DOUGLAS A. DUCEY
Governor

TROY L. CAMPBELL
Board Chair

COLONEL HESTON SILBERT
Interim Director

Arizona State Liquor Board Hearing Minutes
June 3, 2021

Members Present: Troy L. Campbell – Chair, Lynn Shulman – Vice Chair and Michael N. Widener
Members Absent: None
Counsel Present: Michael Raine, Assistant Attorney General
Staff Present: Denise Bale, Board Administrator
Arlene Moreno, Interim Board Administrator

A. Call to Order

The hearing of the Arizona State Liquor Board was called to order on June 3, 2021, at 10:00 a.m. with Mr. Campbell presiding via Google Meet. Other Board members, staff, and all parties participated either by Google Meet or telephonically.

Roll Call

All members were present.

1. Restaurant Liquor License, Application No. 122569 - Original Application

Charmaine Marion Anderson, Agent
Island VYBZ Bar & Grill
220 E. Southern Avenue #1 & 2
Phoenix, AZ 85040

This matter was continued from the May 6, 2021 hearings. This matter is set for hearing because the City of Phoenix recommended disapproval.

Mr. Campbell announced that the meeting would switch to agenda item E. Call to the Public in order for Colonel Heston Silbert to address the Board.

E. Call to the Public

Colonel Heston Silbert and his delegate, Major Wayne Webb, appeared before the Board via Google Meet. Colonel Silbert is the Interim Director of the Department of Liquor Licenses and Control. Colonel Silbert reported that the Department is significantly underfunded for the mission at hand. There are several administrative challenges, and he has assigned Major Webb and Captain Matthew Kunda to work through some strategic management components to move the agency forward. Major Webb and Captain Kunda are in an assessment phase and will continue to work at a speed in which they are comfortable.

Colonel Silbert encouraged the Board to reach out to himself, Major Webb or Captain Kunda if there is anything they need to assist them in fulfilling their role. Mr. Campbell thanked Colonel Silbert for his time and remarks.

Mr. Campbell announced that the regular meeting would resume.

B. 10:00 a.m. Agenda: Review, consideration and action

Mr. Campbell called the second matter because the Applicant had requested a continuance to the July hearings.

2. Bar Liquor License No. 06100174, Application No. 119787 – Owner Transfer Application

H.J. Lewkowitz, Agent
Lucky's LLC
Love Cabaret
5822 E. Speedway
Tucson, AZ 85712

This matter is set for hearing because the City of Tucson recommended disapproval based the personal qualifications of the applicant given its history of operating a different location where acts of violence and noncompliance with Executive Orders related to COVID-19 occurred. The City also recommended disapproval based on the location given neighborhood testimony about loud music and parties, fights in the parking lot, trash (including drug and sex paraphernalia), graffiti, destruction of property, intrusion on private property, and shootings. Andrea Lewkowitz appeared on behalf of the Applicant. Assistant City Attorney Jennifer Stash appeared on behalf of the City of Tucson. There were no objections to continuing this matter.

Motion to continue the hearing to the next
regular agenda of the Board -

Seconded -

Yay -

Nay -

Abstained -

Disposition -

Widener

Shulman

Widener, Shulman, Campbell

None

None

Hearing continued to July 8, 2021

Mr. Campbell called the first matter on the agenda.

1. Restaurant Liquor License, Application No. 122569 - Original Application

Charmaine Marion Anderson, Agent
Island VYBZ Bar & Grill
220 E. Southern Avenue #1 & 2
Phoenix, AZ 85040

This matter was continued from the May 6, 2021 meeting. This matter is set for hearing because the City of Phoenix recommended disapproval. The Applicant, Island Vybz Bar & Grill, and its Agent, Charmaine Marion Anderson, appeared at the hearing and were represented by Matthew S. Hilscher and Jonathan Ibsen. Charmaine Anderson testified on behalf of the Applicant. Assistant City Prosecutor Lori Van Haren appeared on behalf of the City of Phoenix. Detective Jared Smart testified in support of the City of Phoenix.

Mr. Hilscher began by invoking the rule to exclude Detective Smart from witnessing Ms. Anderson when she testifies. Mr. Campbell requested Mr. Raine's assistance. Mr. Raine explained the rule is

essentially a rule that says that the witnesses who will testify should be excluded from a hearing so that they do not have the benefit of hearing other witnesses' testimony. That is generally a rule of evidence and the Rules of Evidence do not apply to these matters. For hearings conducted at the Office of Administrative Hearings, the rule is often invoked and applied. The rule does apply or can apply at the discretion of the Hearing Officer, but typically, it does not apply to the primary or the key witness from a party. The City of Phoenix has noted that Detective Smart is their party witness, so the rule generally would not apply in that circumstance. The City of Phoenix may have no objection to having their witness step outside just to resolve the issue or the Board could request an executive session for the purpose of receiving legal advice.

Mr. Campbell asked Ms. Van Haren if she had any objection to having her witness step out of the room. Ms. Van Haren did object because Detective Smart is the City's case agent and primary witness. Mr. Campbell made a motion to go into executive session for the purpose of receiving legal advice. Mr. Ibsen interrupted the vote and noted for the record the basis of Applicant's objection.

Before you adjourn, we want to put on the record the basis of our objection so you will have that when you go into executive session. The basis of that would be that the officer who is testifying is actually the officer who was the investigative officer on the scene with regard to investigating this complaint. He wasn't designated as the party representative prior to this. Beyond that, if they were going to be using their primary fact witness, then they should have designated another party representative to be there. But the prejudice to our client would be no different than any other fact witness who would be observing a proceeding, in that they would then be able to tailor their testimony with regard to what they hear. Such that the City should have designated a different party representative and I believe when we had roll call, I thought that there was somebody here from the Attorney General's Office as a representative of the City. Though, it would seem duplicative and prejudicial to our client. So, just so you have that on the record when you adjourn.

Motion to go into executive session for the purpose of receiving legal advice -	Campbell
Second -	Shulman
Aye -	Campbell, Shulman, Widener
Nay -	None
Abstained -	None
Disposition -	Convene in executive session

The Board convened in executive session at 10:25 a.m. and reconvened in open session at 10:35 a.m.

Mr. Campbell thanked Mr. Hilscher and Mr. Ibsen for bringing the rule and their objections to the Board's attention. However, the City of Phoenix is allowed to have its witness in the hearing. Mr. Hilscher presented an opening statement. Ms. Van Haren presented an opening statement.

Mr. Hilscher questioned Ms. Anderson. Ms. Anderson moved from Pennsylvania to help her brothers with the restaurant. Mr. Hilscher questioned Ms. Anderson about her meeting with Detective Smart. Ms. Anderson testified about her qualifications for owning and operating the restaurant.

Ms. Van Haren questioned Ms. Anderson about her liquor license application. Ms. Anderson testified that she trusted Justin Francis to complete the application for her, and that she did not review the completed application before it was submitted to the Department of Liquor Licenses and Control. Ms. Van Haren asked about the discrepancies in ownership dates and about the private parties that are held in the restaurant.

There were Board questions about the operations of the restaurant including hours of operation, recipes, menu items, restaurant owners, trade name ownership, restaurant employees, private parties, social

media, Better Business Bureau listing, promotional events held at the restaurant, and admission and cover charges for patrons.

Ms. Van Haren questioned Detective Smart about his meeting with Ms. Anderson, social media posts about the restaurant, videos depicting DJs and a nightclub atmosphere at the location, inconsistent application responses, and proof of restaurant ownership.

Mr. Ibsen questioned Detective Smart about the restaurant floor plan and furniture, social media posts, ads for drinks specials, and available body cam footage of his interview of Ms. Anderson. There were Board questions about the first time Detective Smart visited the restaurant, Ms. Anderson's responses to his interview questions, and the number of employees present in the restaurant.

Mr. Hilscher presented a closing statement. Ms. Van Haren presented a closing statement. There was Board discussion. Mr. Widener made a motion:

In the matter of application number 122569, Island Vybz at 220 Southern, Phoenix, I reluctantly with conviction recommend denial of the application on the basis, well-articulated by the other members of the board, I think that ultimately the responsibility of complying with state liquor laws falls upon the applicant irrespective of what other family members do or fail to do in their engagement with the business. I realize that a family business has a different dynamic, and I am not unempathetic to that, but Charmaine Anderson is listed as the Applicant. And as the Vice Chair correctly noted, ultimately she is responsible for everything including the content of the application. And so, I find that from the opening of the establishment until its closing, whenever that is, which apparently at least part of the time is well after the kitchen closes, Ms. Anderson has not behaved in a manner evidencing that she is capable, qualified, or reliable. I have less concern about any element of the application that deals with location, but the capability, qualifications and reliability of the applicant is in question to the point that I recommend, I move the denial of the application. Thank you, Mr. Chairman.

Motion to deny application -	Widener
Second -	Shulman
Aye -	Widener, Shulman, Campbell
Nay -	None
Abstained -	None
Disposition -	License denied

Mr. Raine advised that under A.R.S. § 4-203.01(E) the Board must cancel the interim permit by a separate motion. Mr. Widener asked a point of order on how soon the interim permit would be cancelled. Mr. Raine said that because the Department's position would be to stop liquor sales as soon as possible, perhaps one or two days. Ms. Shulman made a motion to cancel the interim permit.

Motion to cancel interim permit -	Shulman
Second -	Widener
Aye -	Shulman, Widener, Campbell
Nay -	None
Abstained -	None
Disposition -	Interim permit cancelled

Mr. Hilscher asked what this means for Ms. Anderson as of today. Mr. Campbell referred Ms. Anderson to the Department where she can have her questions answered.

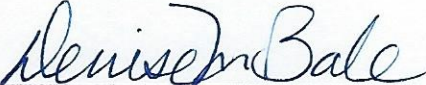
C. Minutes: Review, Consideration and Action

Motion to approve minutes of May 6, 2021 -	Shulman
Seconded -	Widener
Yay -	Shulman, Widener, Campbell
Nay -	None
Abstained -	None
Disposition -	Minutes of May 6, 2021 approved

D. Reports on Current Events, Matters of Board Procedure, Requests and Items for Future Agenda

The next Board meeting is scheduled for July 8, 2021. Four matters are set for hearing. Mr. Campbell advised that he might have a conflict with work and he will keep Members and staff updated.

Motion to adjourn meeting -	Widener
Seconded -	Shulman
Yay -	Widener, Shulman, Campbell
Nay -	None
Abstained -	None
Disposition -	Meeting adjourned at 12:29 p.m.



Denise M. Bale
Administrator of the
Arizona State Liquor Board



Date